It will be interesting, however, to watch the spread of the two opposing opinions to other states.

FOREIGN CORPORATIONS—RIGHT OF ACTION AFTER FAILURE TO COMPLY WITH STATE REGISTRY LAW.

The courts of the various States have long been in conflict as to the right of a foreign corporation to sue on a contract when it has failed to comply with the requirements of the State in regard to acquiring the right of doing business in the State.

In a recent case in Pennsylvania—*Delaware River Quarry & Construction Co. v. Bethlehem & Nazareth Passenger Railway Co. et al.,* 53 Atl. 533—this subject is again brought to our notice.

In this case a New Jersey corporation had constructed a railroad for a Pensylvania company without having registered in Pennsylvania, which was required as a condition precedent to the right of doing busines in that State. It was *held* that the company could not sue on a *quantum meruit* to recover for labor and materials and that any contract, express or implied, made by this company, within the State, was absolutely void. The reasoning of the court is to the effect that this is a contract made in violation of the provisions of the constitution and laws of the State, and, therefore, it is against public policy to enforce it. *Parish v. Wheeler,* 22 N. Y. 494; *Whitmore v. Montgomery,* 165 Pa. 253.

In direct conflict with this doctrine is that upheld in Tennessee and Alabama—*Trust Co. v. Willhoit,* 84 Fed. 514; *Sherwood v. Alvis,* 83 Ala. 115—which follows the same reasoning as that laid down in the Supreme Court of the United States, *Fritts v. Palmer,* 132 U. S. 282, where the leading cases on the subject are cited. Here it is held that a contract of this nature is not against public policy, is not invalid as between the parties and can only be interfered with at the instance of the State. This holding is in exact accord with the doctrine in regard to the restriction on the holding of real estate by national banks. *Gold Mining Co. v. National Bank,* 96 U. S. 640.

Another line of cases, following a decision in New York—*Crefield Mills v. Goddard,* 69 Fed. 141—hold that a State law of this kind is merely a State regulation, and that its only effect is to suspend the right to sue until the requirements are complied with. *Sullivan v. Beck,* 79 Fed. 200; *Gas Pipe Co. v. Connell,* 33 N. Y. Supp. 482.

The practical result of the holding in New York seems to vary but slightly from the result of that in Tennessee. Both States make it possible for a corporation to disobey the law and still, by a subsequent compliance, lose nothing by such action; while that in Pennsylvania goes to the other extreme and by declaring all such contracts absolutely void, bars the plaintiff from the protection of the rule that estops the defendant from claiming immunity after having received some benefit, and of that principle which fixes a

liability upon executed contracts; and it also works a great hardship on any foreign corporations that have unknowingly failed to carry out the State requirements.

However, under the latter holding, the law would almost invariably be obeyed, while under the former, no corporation would feel called upon to obey the statutes until it became necessary for them to bring some action or suit.

THE EXTENT OF THE POSTMASTER GENERAL'S RIGHT TO REGULATE THE USE OF THE MAILS.

How wide a discretion has the postmaster general in determining what are fraudulent enterprises? Can he supplement the regulations of Congress in determining what is second-class matter? These two questions have been decided in the recent cases of *American School of Magnetic Healing v. McAnnulty,* 23 Sup. Ct. Rep. 33, and *Payne v. United States,* 30 Wash. L. Rep. 791. In the first case the delivery of mail addressed to the plaintiff was prohibited by the postmaster general on the ground that its business of practicing and teaching by correspondence a system of healing diseases through the influence of the mind over the body was fraudulent. The Supreme Court regarded this action as in excess of authority and granted injunctive relief. While refusing to discuss whether the statute under which the Department acted, sec. 3929 U. S. Revised Statutes, is in conflict with the provisions of the Constitution against the deprivation of property without due process of law, the court, White and McKenna, J. J., dissenting, holds that the authority to exclude extends only to cases of fraud in fact, and that the question as to whether magnetic healing is a fraud, is one of opinion depending entirely upon individual belief and differing only in degree from a belief in any particular theory of medicine, electrical treatment, vaccination, or homeopathy, and is, therefore, not a proper subject for the decision of either an administrative officer or the courts. The attitude of the Missouri Supreme Court toward Christian science in the very recent case of *Wetmer v. Bishop,* 71 S. W. 167, is of interest in this connection as expressing the view that those claiming medical powers must prove them to the court on a basis of natural power and that the fact that witnesses claim to have benefited thereby is not of itself sufficient. The opinion reads, in part: "If there was anything in the plaintiff's business, which they called magnetic healing, that entitled it to the protection of the law and which was not perceptible to the uninstructed, the burden was on them to show the *rationale* of it, and failing to do so the court should close its door against them."

In the second case, that of *Payne v. United States, supra,* the Court of Appeals of the District of Columbia holds that the postmaster general has not the right to add to the regulations of Congress as to what shall constitute second-class matter, a provision that "periodical publications having the characteristics of books"